

IN THE DISTRICT COURT OF UTAH COUNTY, UTAH.

PROVO RESERVOIR COMPANY,

Plaintiff,

-vs-

PROVO CITY, et al,

Defendants.

OBJECTIONS TO AND
MOTION FOR MODIFI-
CATION OF DECISION.

Comes now Utah Power & Light Company, one of the defendants herein, and without waiver of and reserving to itself the right to make any and all objections and motions to modify the written findings of fact and conclusions of law, when made by the Court and entered of record in this cause, objects to the decision heretofore rendered herein and moves the Court to modify the same in the following particulars, viz.:

1. The defendant objects to that part of said decision set forth and contained in the eighteenth paragraph thereof and moves the Court to modify the same in respect

(a) to the limitation, of 229 second feet, therein placed upon the right of the defendant to divert and use the waters of Provo River for power purposes at its Olmsted plant, for the reason that the same is manifestly against the weight of the evidence introduced at the trial of this cause, defendant having proved by a preponderance of the evidence that it has acquired the right and is entitled to divert and use from said river and its tributaries, for the purposes aforesaid, in excess of three hundred (300) second feet; and

(b) In respect to the limitation thereby placed on the right of the defendant to divert indiscriminately from said river and any and all tributaries thereof to the extent that there may be water flowing in said river or such tributaries-

ies, the total amount of water which it is entitled to use for the operation of its said Olmsted plant, for the reason that the evidence introduced at the trial of said cause shows that the volume of water flowing in the tributaries mentioned in said paragraph is subject to fluctuation and that when the maximum amount heretofore diverted by the defendant from the said several tributaries of said river has not been available for use therefrom the defendant has been accustomed to divert a correspondingly increased amount of water from said river; and, further, that under the evidence introduced in this cause the said defendant should be awarded the right to take from said river in excess of the amount of water which may be available to it under its appropriations from said tributaries, such an amount of water as may be necessary to satisfy its said appropriations from said river and tributaries in full.

(c) In respect to the period of each year during which the defendant is entitled to divert and use the waters in Provo River for the reason that this defendant's right to divert and use the waters of said river and its tributaries is co-extensive with the annual period and the said decision does not so state.

2. The defendant further objects to that part of said decision set forth and contained in the eighteenth paragraph thereof and moves the Court to modify the same for the reason that it places a limitation upon the right of the defendant to divert from said river and use, for the operation of said plant, any and all waters which may be flowing in said river at any and all seasons of the year which may be required to satisfy the appropriations of other users of waters from said river whose points of diversion are situate below the point of confluence of said river and the tail-race from said Olmsted plant.

3. The defendant objects to that part of said decision set forth and contained in the 19th paragraph thereof and moves the Court to modify the same in respect to the right of L. L. Donnan to divert and use from said Provo River, for power purposes, twenty second feet of water under his said Application No. 4978, for the reason that the same is contrary to law and to the evidence introduced in this cause in that the evidence does not show that said Application has ever been approved by the State Engineer of the State of Utah and this Court is wholly without jurisdiction to adjudicate any of the rights of the said Donnan under the said Application in advance of action thereon by the State Engineer of the State of Utah and appeal from the action of said State Engineer to this Court in the manner provided in the statutes of Utah.

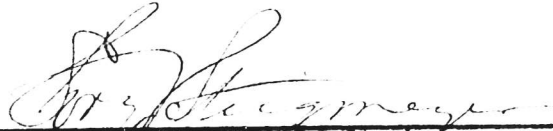
4. The defendant objects to that part of said decision set forth and contained in the 31st paragraph thereof and moves the Court to modify the same in respect to the right of Provo Reservoir Company to divert and use from said Provo River, one hundred fifty (150) second feet of water under its said Application No. 1828, for the reason that the same is contrary to law and to the evidence introduced in this cause in that the evidence does not show that said Application has ever been approved by the State Engineer of the State of Utah, and this Court is wholly without jurisdiction to adjudicate any of the rights of the said Provo Reservoir Company under the said Application in advance of action thereon by the State Engineer of the State of Utah and appeal from the action of said State Engineer to this Court in the manner provided in the statutes of Utah.

5. Defendant objects to that portion of said decision set forth and contained in the 58th paragraph thereof and moves the Court to modify the same in respect to the period of each year

during which the defendant is entitled to divert and use the waters of Provo River and Snake Creek under its Certificates issued by the State Engineer of the State of Idaho Nos. 351 and 439, for the reason that the defendant's right to divert and use the waters of Snake Creek and Provo River under the said Certificates is co-extensive with the annual period and the said decision does not so state.

6. The defendant objects to that part of said decision set forth and contained in the sixty-fourth paragraph thereof and moves the Court to modify the same in respect to the period during which the plaintiff and defendants in said cause, having reservoirs in Wasatch and Summit Counties, may store waters tributary to the said river, for the reason that the said paragraph grants unto the said parties the right to store waters in said reservoirs between the 15th day of September and the 15th day of April of the following year, whereas the rights of the defendant, Utah Power & Light Company, to divert and use the waters of said river for power purposes is co-extensive with the annual period, and the rights of storage given by said paragraph are not made subject to the rights of the said defendant, Utah Power & Light Company.

WHEREFORE, etc.



Attorneys for Defendant,
Utah Power & Light Company.

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2888
IN DIST. COURT
UTAH CO., UTAH.
* FILED *

DEC 15 1917
L. B. Hansen, Clerk
J. B. Russell, Attorney